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ABSTRACT

The issues of sexual harassment and appropriate sexual conduct have caused nationwide interest in ethics in academia. Questions of the appropriateness of sexual relationships between faculty and students, and between supervisors and employees, are both legal and ethical in nature. The Supreme Court has ruled that the most important factor in determining the merit of a sexual harassment case is whether the conduct was "welcome." However, the defense of consensuality is not viable when one partner in the relationship has power over the other. Supervisors, administrators, faculty, and/or staff may be liable in three possible situations: (1) a relationship that started out as "welcome" may become unwelcome; (2) the parents of a student involved in a sexual relationship with a faculty member may complain about the inappropriateness of the relationship; and (3) classmates of a student involved with an instructor may claim unequal treatment. The creation of an academic environment free of unethical conduct may be approached by formally adopting a code of ethics, and/or adding a statement about appropriate sexual relationships to existing sexual harassment policies. The University of Hawaii's community college system is in the process of doing both. Faculty senates on all six campuses have adopted the American Association of University Professors' Statement on Professional Ethics and are currently modifying their sexual harassment policy to indicate that sexual relationships between faculty/supervisors and students/employees, even by mutual consent, may be grounds for disciplinary action. Adopting a code of professional ethics does not guarantee ethical behavior, but it demonstrates that the college is committed to ensuring an ethical academic community. (JMC)

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ADDRESSING THE ISSUE OF APPROPRIATE PROFESSIONAL ETHICS ON COMMUNITY COLLEGE CAMPUSES

Doric Little, Ed.D.

Paper presented at the 69th Annual Convention of the American Association of Community and Junior Colleges, Washington, DC, March 29 - April 1, 1989

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Addressing the Issue of Appropriate Professional Ethics on Community College Campuses

by Doric Little, Ed.D.

As we enter the 1990's, community colleges and universities are facing an ethical dilemma. The issue--are we, as members of an academic community, by our very nature's ethical and moral or do we need to adopt a code of ethics as other professions have? While this question is broad in scope and covers a wide range of professional conduct, it is the issue of sexual harassment and, more significantly, appropriate sexual conduct which has caused a national interest in ethics in academia.

The 1980's saw almost every college campus adopt a policy or statement dealing with the subject of sexual harassment. These policies were prompted by the publication in 1980 of the Equal Employment Opportunity Commission's (EEOC) legal guidelines which recognized sexual harassment as sex discrimination under Title VII of the Civil Rights Act of 1964. In the latter half of the 1980's, some policies or statements dealing with sexual relationships on campus appeared. These seem to have resulted from the decision made by the Supreme Court in its first and only sexual harassment case, Meritor Savings Bank v. Vinson, 106 S. Ct. 2399 (1986).

Why and how should we, the Community Colleges, address this issue of ethical conduct in our professional relationships? This article will first address the "Why?" and then the "How?" Neither question requires a complicated answer.

If asked why we should be concerned about the appropriateness of sexual relationships on campus, most academicians would assert that our interest is legal in nature. They would be correct. Since the Supreme Court came out with the Meritor decision, we do have legal cause for concern. The Court ruled that the most important factor in determining if a sexual harassment case has merit is whether the sexual conduct was "welcome". This ruling meant that a faculty member or administrator could no longer use, as a defense, the argument that the complainant went along with the alleged harassment. Previously, academicians may have felt an element of security, or at least an element of defense, in a consensual relationship with a student. Today, the defense of consensuality is no longer viable.

Another factor which impacts this issue is the deference which our legal system has given academicians in making academic decisions. Unless an academic decision can be proven to be arbitrary and capricious, the courts have consistently deferred to the judgment of the faculty. With this high regard comes a concomitant expectation of professional behavior. In fact, a review of higher education court cases indicates that faculty are generally held to a higher standard of professional conduct than are their colleagues in the world of work.

Just who could be liable in a sexual harassment suit that began as a consensual relationship between a supervisor and a subordinate or a faculty member and a student? Supervisors,

administrators, faculty and/or staff may each be liable in three possible situations.

First, what started out as welcome can become unwelcome. The excuse of equal choice in a sexual relationship does not exist when one half (the supervisor or faculty member) has power over the other (the subordinate or student). Second, the parents of a student may complain to an institution about the inappropriateness of a "consensual" relationship between their child and a supervisor or faculty member. Finally, classmates of a student having a sexual relationship with an instructor may claim unequal treatment as a violation of EEOC guidelines. In all three cases, liability does not rest with the perpetrator alone.

If the possibility of financial liability does not move the academic community to act, examples of harm that students and suborinates have suffered because of the unethical demands or conduct of colleagues is often persuasive. Examples of male and female students who have been sexually exploited can be found on any campus. EEO officers or Deans of Students are the people who know the stories. Members of the academic community are largely in agreement that no student should be put in the position of having to drop classes or endure inappropriate attention in order to receive an education. It is especially important that community colleges, the open door academic institutions, provide ethical role models in their administrators, faculty, and staff.

Now, how may an academic institution create an academic environment free of unethical conduct? How does it attempt to maintain an academic environment which allows the entire academic community (administrators, faculty, staff and students) to carry on its activities free of unethical demands or constraints? There are two means of approaching the issue. Neither can guarantee perfection but both are significant ways to address the problem.

The easiest way is to formally adopt a code of ethics. The courts have supported academic institutions when they've used their codes of ethics to censure or dismiss a member of the community who has violated the code. Of course, due process protections must be adhered to but citing federal law or executive orders has not been necessary.

The other way, and it is more narrow in scope, is to amend an existing sexual harassment policy to include a paragraph on appropriate sexual relationships. The Community College System of the University of Hawaii has combined the two methods and has, although still in the final stages of adoption, an exemplary means of assuring a professional environment on its six campuses.

Both the method of adoption and the substance of the code and sexual relationship paragraph of the Community College System in Hawaii merit discussion and can serve as models for community colleges wishing to address this issue on their own campuses. In Hawaii, discussion began at the request of a faculty member and had the full support of the Chancellor of the Community Colleges.

Provosts of each campus were asked to select a faculty member to serve on a committee whose purpose was to propose a policy (or code of ethics) dealing with professional conduct (sexual relationships between supervisors/subordinates, faculty/students) to the Chancellor.

After a year of regular meetings, the committee made its recommendations. The recommendations were in two parts:

1. The AAUP (American Association of University Professors) Revised (June 1987) Statement on Professional Ethics be adopted by the System.
2. The current sexual harassment policy be amended to include a paragraph discussing appropriate sexual relationships.

The recommendation regarding the Statement on Professional Ethics went to each Faculty Senate where it was ultimately adopted by all six campuses. The recommendation regarding the amendment was discussed on all campuses, was revised and consultation with appropriate unions will take place soon. A key element in the success of this undertaking was that, once the recommendations were made, there was wide distribution on each campus and there was administrative support from the Chancellor on down.

Actually, the adoption of a code of ethics or a statement of professional conduct has proven to be sufficient to protect the academic community from unethical members. The additional step of amending the sexual harassment policy serves to clarify and alert

the campus community to the problems and consequences of unethical behavior.

While an entire code of ethics (such as AAUP'S) will be of use to the academic community which adopts it, the paragraph which deals with faculty/student relationships is particularly helpful. The second paragraph of the AAUP Statement on Professional Ethics is an excellent example. It states:

> As teachers, professors encourage the free pursuit of learning in their students. They hold before them the best scholarly and ethical standards of their discipline. Professors demonstrate respect for students as individuals, and adhere to their proper roles as intellectual guides and counselors. Professors make every reasonable effort to foster honest academic conduct and to assure that their evaluations of students reflect each student's true merit. They respect the confidential nature of the relationship between professor and student. They avoid any exploitation, harassment, or discriminatory treatment of students. They acknowledge significant academic or scholarly assistance from them. They protect their academic freedom.

The paragraph under discussion by Hawaii's Community Colleges for inclusion in their sexual harassment policy reads as follows:

> Sexual relationships, even though welcome, which may be appropriate under other circumstances may not be appropriate when they occur between a faculty member and student or a supervisor and employee at the University. These situations could form a legitimate basis for disciplinary action. Even in situations where no negative consequences arise for the individuals involved, such relationships can create potential conflict of interest problems and possible use of academic or supervisory leverage to maintain or promote the relationship. Sexual relationships viewed by the parties as mutual may still raise questions of favoritism as well as abuse of trust and power. This is particularly the case where a student is enrolled in a course being taught by the involved faculty member, or when the faculty member and student are in academically allied units.

Why should we, as community colleges, adopt a policy on professional ethics? The answer is both legal and moral. How do we go about adopting such a policy? We involve all levels of the academic community in the process. Because resistance is almost always due to lack of information, ample information is provided. Adopting a code of professional ethics does not guarantee ethical behavior but it demonstrates to the entire academic community that the community college is committed to ensuring an ethical academic community.

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